Comptroller is included in the term Comptroller in section 90(2) of the Ordinance and may appear on the Comptroller's behalf. The adverb "personally" is, in my view, used in antithesis to "by counsel" and does not bear the implication that the Comptroller (notwithstanding the definition in the interpretation section) must appear in person.

I would add, although this is not the reason for my conclusion, that the interpretation which I favour has the advantage of being administratively convenient.

Secondly, may an Assistant Comptroller of Income Tax present a petition under section 4 of the Bankruptcy Ordinance read together with section 90(1) of the Income Tax Ordinance?

Section 4 of the Bankruptcy Ordinance reads as follows:—

"Subject to the conditions hereinafter specified, if a debtor has committed an act of bankruptcy, the Court may on a bankruptcy petition being presented, either by a creditor or by the debtor make an order for the protection of the estate, which order is in this Ordinance called a receiving order."

Unlike the Income Tax Ordinance, the definition section of the Bankruptcy Ordinance does not contain any provision to the effect that where the creditor is the Comptroller of Income Tax a bankruptcy petition may be presented either by him in person or by a Deputy Comptroller or an Assistant Comptroller.

That being so, I am not disposed to import into the Bankruptcy Ordinance any such qualification of the term "creditor". In income tax matters the creditor is the Comptroller of Income Tax; and for the purpose of the Bankruptcy Ordinance no other person, in my opinion, can be included in this term.

I am happy to learn that in this matter no appreciable administrative inconvenience is involved by my interpretation, as I am informed from the Bar that on an average not more than a dozen such petitions are presented on behalf of the Income Tax Department in the course of a year.

In the result, therefore, the appeal is dismissed. The respondent was not represented and did not appear in person. There will therefore be no order as to costs.

Chua and **Wee Chong Jin JJ.** concurred.

Appeal dismissed.

X. Y. v. THE COMPTROLLER OF INCOME TAX, SINGAPORE

[O. C. J. (Buttrose J.) May 19, 1960]

[Singapore — Summons in Chambers No. 175 of 1960 & Summons in Chambers No. 177 of 1960]

Practice and Procedure — Specially indorsed writs — Income tax matter — Writ signed by Asst. Comptroller described as "plaintiff in person" — Whether there was contradiction on face of writ as to identity of plaintiff.

In these applications the applicant sought for an order declaring the writs of summons in the action and all subsequent proceedings including the judgments to be void or alternatively that the same be set aside for invalidity or alternatively irregularity. The writs in question, both specially endorsed, were issued by the Comptroller against the applicant, and judgments were entered in default of appearance. The grounds on which the applications were based were: (i) the writs were not issued or signed by the plaintiff but by a person who was neither the plaintiff nor his solicitor; and (ii) there was a contradiction on the face of the writs as to the identity of the plaintiff.

The facts were that in each case the plaintiff was the Comptroller of Income Tax and both writs purport on the face of them to be issued by the plaintiff. They were signed by one W. Gordon described as an Asst. Comptroller of Income Tax, Singapore, and then follow the words "Plaintiff in Person".

The point for decision was whether the writs and statements of claim endorsed thereon have been signed by the plaintiff in conformity with the Rules of the Supreme Court.

Held: Mr. Gordon did not sign the writs and statements of claim as Asst. Comptroller of Income Tax which was merely his official title which described his appointment in the Income Tax Department. He signed as therein stated, namely the plaintiff, i.e. the Comptroller of Income Tax, Singapore, in which term title or official name he was included by virtue of the definition in section 2 of the Income Tax Ordinance.

Comptroller of Income Tax v. *Dia Singh* (1) distinguished.

Case referred to:—

(1) *Comptroller of Income Tax* v. *Dia Singh* [1960] M.L.J. 135, C.A.

APPLICATIONS by Summons.

S. H. D. Elias for the applicant.

Lim Chor Pee (Crown Counsel) for the respondent.

Buttrose J.: These were two applications by summons in each case on the part of the defendant for an order declaring the writs of summons in the action and all subsequent proceedings including the judgments to be void or alternatively that the same be set aside for invalidity or alternatively irregularity.

The writs in question, both specially endorsed, were issued by the Comptroller of Income Tax against the defendant on the 13th March 1958 and judgments were entered on the 22nd March 1958 in default of appearance. Bankruptcy Notices were then issued and served on the defendant on the 4th July 1958 and after security had been lodged to the satisfaction of the Comptroller these Notices were set aside on the 8th August 1958. Subsequently the judgments in both actions were paid and satisfied in full. Nothing further seems to have transpired in so far as these proceedings are concerned until the 22nd February 1960 when the two summons with which I am now concerned were taken out.

The grounds on which the present applications are based are:—

(1) that the writs were not issued or signed by the plaintiff but by a person who was neither the plaintiff nor his solicitor; and

(2) that there was a contradiction on the face of the writs as to the identity of the plaintiff.

Now, the plaintiff in each case was the Comptroller of Income Tax, Singapore, and both writs purport on the face of them to be issued by the plaintiff. They are in fact signed by one W. Gordon described as an Assistant Comptroller of Income Tax, Singapore, and then follow the words "Plaintiff in Person". This phrase, in my view, is used merely in antithesis to "plaintiff's solicitor".

Under the Rules of the Supreme Court a writ and statement of claim must be signed either by the plaintiff's solicitor or by the plaintiff if, as here, he sues in person and the short point for decision is whether the writs and statements of claim endorsed thereon have been signed by the plaintiff in conformity with the Rules of the Supreme Court.

Section 90(1) of the Income Tax Ordinance provides that tax may be sued for and recovered in a Court of competent jurisdiction by the Comptroller in his official name. Now, the Comptroller is defined in section 2 of the Ordinance as meaning "the Comptroller appointed under section 5 of this Ordinance and includes for all purposes of this Ordinance except the exercise of the powers conferred upon the Comptroller by sections 95, 96 and 99 of this Ordinance, a Deputy Comptroller or an Assistant Comptroller so appointed."

Having regard to this definition, I am of the opinion that an Assistant Comptroller is included in the term Comptroller in section 90(1) of the Ordinance.

In the view I take, Mr. Gordon did not sign the writs and statements of claim as Assistant Comptroller of Income Tax which was merely his official title which described his appointment in the Income Tax Department. He signed as therein stated, namely, the plaintiff i.e. the Comptroller of Income Tax, Singapore, in which term title or official name he is included by virtue of the definition.

Similarly, under section 90(2) of the Ordinance, which provides that the Comptroller may appear personally or by Counsel in any suit instituted under this section, Mr. Gordon as an Assistant Comptroller of Income Tax could appear as the Comptroller as by the definition he is included in the term.

I think the case of *The Comptroller of Income Tax, Singapore* v. *Dia Singh* [1] to which I was referred and on which considerable reliance was placed by the defendant is distinguishable.

In that case judgment had been obtained by the Comptroller of Income Tax and a Bankruptcy Notice founded on the judgment had been issued in his name. A Bankruptcy Petition was then presented not by the Comptroller of Income Tax but by one William Gordon, Assistant Comptroller of Income Tax, personally, who in the affidavit accompanying the petition stated he was the petitioning creditor. It was the Comptroller of Income Tax who was the petitioning creditor and not Mr. Gordon, the Assistant Comptroller of Income Tax.

For these reasons, I have come to the conclusion that there was here a sufficient compliance with the Rules of the Supreme Court and both summonses must therefore be dismissed with costs.

Applications dismissed.

Solicitors: *Elias Bros.; State Advocate-General.*

CHYE HIN CO. (PERAK) LTD. v. PUBLIC PROSECUTOR

[A. Cr. J. (Smith J.) January 5, 1960]

[Ipoh — Criminal Appeal No. 59 of 1959]

Employees Provident Fund — Collective contract — Whether contract of service or independent contract — Employees Provident Fund Ordinance, 1951, s.16A(1)(c) and Employees Provident Fund Regulations, 1952, reg. 3.

The Employees Provident Fund Ordinance applies only to contract of service; it does not apply to the independent contractor. To distinguish between an independent contractor and a servant one of the tests is whether or not the employer retains the power, not only of directing what work is to be done, but also of controlling the manner of doing the work.

In this case the question was whether four sawyers were severally employed by the appellant company so that there existed between each of them and the company a contract of service or whether they formed a partnership which was contracting independently with the company to saw wood for the company. There was no evidence that the person doing the work could be overlooked and directed in regard to the manner of his doing the work. The Manager appeared to have criticised the work when completed but never to have interfered while the work was being done. The Manager did not appear to have the right to dismiss any particular one of the sawyers; he had the right to terminate the services of all of them for bad work but not of any particular one.

Held: (1) on the facts there was a collective contract with a partnership not individual contracts;

(2) the sawyers were not employed by the company under a contract of service and therefore the company were not liable to pay contributions to the Employees Provident Fund Board in respect of the sawyers.

Cases referred to:—

(1) *Cameron & Anor.* v. *Nystrom*, [1893] A.C. 308.

(2) *Vamplew & Ors.* v. *Parkgate Iron & Steel Co. Ltd.* [1903] 1 K.B. 851.

MAGISTRATE'S CRIMINAL APPEAL.

P. J. D. Regester (*Meera Hussain* with him) for the appellant.

Raja Azlan Shah (Federal Counsel) for the respondent.

Smith J.: This is an appeal by the defendant Company against its conviction on the following charge —

"That you, being the employer liable to pay contributions to the Employees Provident Fund Board under